

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TEXTRON FINANCIAL CORPORATION,

vs.

MICHAEL S. GALLEGOS,

Plaintiff,

Defendant.

CASE NO. 15cv1678-LAB (DHB)

**ORDER DENYING TEXTRON'S
MOTION TO CHARGE GALLEGOS'
MEMBERSHIP INTEREST**

Textron obtained a \$21,921,165.45 judgment against Gallegos in the U.S. District Court for the District of Rhode Island, but has only collected \$10,484.99. (Docket nos. 40-1 and 40-6.) Its assignee, SPE LO Holdings, seeks a charging order against Gallegos' interest in two entities: Pacific Pearl Hotels, LLC and Pacific Pearl Hotel Management, LLC. (Docket no. 40.) SPE LO relies on California Secretary of State documents to establish Gallegos' interest in the LLCs. (Docket nos. 40-2, 40-3, and 40-4.) Gallegos' name is listed on line 9 of the Secretary of State documents, which require the "name . . . of any manager . . . , or if none have been appointed or elected, . . . the name . . . of each member." (Docket nos. 40-2 and 40-3.) His name is also listed on line 15, where he's identified as the "manager" of both LLCs. SPE LO served the motion by mail on Gallegos and the LLCs. (Docket nos. 40-9 and 41.)

Gallegos opposes the motion, arguing: (1) the Secretary of State records aren't admissible; (2) Textron failed to serve the LLCs; and (3) Textron hasn't shown that he is a

1 member of the LLCs. (Docket no. 47.) He doesn't contend that the Secretary of State
 2 records are inaccurate. Nor does he deny that he's a member of the LLCs. He just argues
 3 that SPE LO hasn't proved it.

4 **Admissibility of Secretary of State Records**

5 The Secretary of State filings are matters of public record whose accuracy cannot be
 6 reasonably disputed. *Potocki v. Wells Fargo Bank, NA*, 2014 WL 2949286, at *1 n.1 (E.D.
 7 Cal. June 30, 2014). The Court takes judicial notice of them.

8 **Sufficiency of Service**

9 When there's a money judgment against an LLC member personally, but not against
 10 the LLC, the member's interest may be reached by a charging order. Cal. Code of Civ. P.
 11 § 708.310. A charging order is a lien on the member's distributional interest. 51 Am. Jur.
 12 2d Limited Liability Companies § 23. It only allows the judgment creditor to receive
 13 distributions to which the member would otherwise be entitled; it doesn't entitle the creditor
 14 to participate in the LLC's management or exercise the rights of a member. Cal. Corp. Code
 15 §§ 17701.02(aa), 17705.02, and 17705.03. It thereby "protect[s] other members of an LLC
 16 from being forced to involuntarily share governance responsibilities with someone they did
 17 not choose, or from being forced to accept a creditor of another member as a co-manager."
 18 *In re First Prot., Inc.*, 440 B.R. 821, 829–30 (B.A.P. 9th Cir. 2010).

19 Because the other LLC members are protected, a judgment creditor can obtain a
 20 charging order under § 17705.03(a) without serving the LLC or making it a party. *See Bank*
 21 *of Am., NA v. Freed*, 983 N.E.2d 509, 522 (Dec. 28, 2012) ("[C]harging orders on
 22 distributional interests do not affect the rights or interests of the LLC to the degree necessary
 23 to require that it be made a party. . . . It would be impractical and unnecessarily costly to
 24 require a lender seeking charging orders to serve all of the entities in which a borrower has
 25 an interest."). But, to obtain a lien on a judgment debtor's interest in an LLC before the court
 26 issues a charging order, the judgment creditor must serve a notice of motion for charging
 27 order on (1) the debtor and (2) the LLC or all of its members. Cal. Code of Civ. P. §
 28 708.320(a). Service by mail is sufficient to satisfy § 708.320(a); personal service isn't

1 required. See, e.g., *Choice Hotels Int'l, Inc. v. Penta Denver LLC*, No. 3:13-mc-80249, 2014
 2 WL 458069, at *4 (N.D. Cal. Jan. 27, 2014); see also *id.* at Docket no. 8. Textron adequately
 3 served Gallegos and the LLCs.

4 **Gallegos' Interest in the Pacific Pearl Entities**

5 Entry of a charging order requires "substantial evidence" that the debtor is a partner
 6 or member of the entity. See *Ribero v. Callaway*, 87 Cal. App. 2d 135, 139 (1948); Cf.
 7 *Regions Bank v. Alverne Associates, LLC*, 456 S.W.3d 52, 58 (Mo. Ct. App. 2014).
 8 "Substantial evidence" means "such relevant evidence as a reasonable mind might accept
 9 as adequate to support a conclusion." *Braewood Convalescent Hosp. v. Workers' Comp.*
 10 *Appeals Bd.*, 34 Cal. 3d 159, 164 (1983). It has been found where the debtor's interest was
 11 evidenced by a certificate of limited copartnership, *Ribero v. Callaway*, 87 Cal. App. 2d at
 12 137, and by previous declarations of the debtor and his partner, *Safeco Ins. Co. of Am. v.*
 13 *Raisch Co.*, 2013 U.S. Dist. LEXIS 39658, *2 (N.D. Cal March 20, 2013).

14 Here, the Secretary of State documents establish that Gallegos is a manager of the
 15 LLCs. But, an LLC can be managed by a non-member. Cal. Corp. Code §§ 17701.02 and
 16 17704.07. While Gallegos' name is listed on line 9 of the Secretary of State documents,
 17 where the LLCs could have listed a member if no manager had been appointed, line 15
 18 establishes that a manager was appointed. Thus, the Secretary of State documents don't
 19 prove Gallegos' membership interest in the LLCs, and SPE LO offers no other evidence that
 20 Gallegos is a member. While they argue that he is a member in their motion, "statements
 21 made in briefs are not evidence"—let alone substantial evidence. *In re Heritage Bond Litig.*,
 22 2004 WL 1970058, at *4 (C.D. Cal. July 23, 2004).

23 **Conclusion**

24 SPE LO's motion for a charging order is **DENIED WITHOUT PREJUDICE**. It may
 25 bring the motion again once it has substantial evidence of Gallegos' membership interest in

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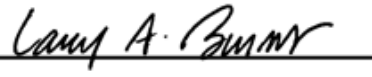
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1 the LLCs. To avoid the possibility that Gallegos has avoided entry of a charging order by
2 playing coy, the Court authorizes SPE LO to pursue postjudgment discovery to determine
3 whether Gallegos is, in fact, a member of the LLCs.

4 **IT IS SO ORDERED.**

5 DATED: October 7, 2015

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7 **HONORABLE LARRY ALAN BURNS**
8 United States District Judge
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